



area to both fleet operators and small users. Based upon its experience and interest in the 900 MHz SMR service, Geotek has participated in the Commission's rulemaking proceeding in the initial 900 MHz Phase II docket, PR Docket 89-553, and the regulatory parity docket 93-252 affecting 900 MHz SMRs. Geotek files this petition for reconsideration in the ongoing proceeding in these dockets.

**I. The 40 dBu Service Standard Should be Modified Consistent with the Record and the Commission's Stated Objectives**

Geotek seeks reconsideration of the Commission's decision to use the 40 dBu "protected service contour" to define incumbent licensee's "existing service areas." Specifically, Geotek requests that the Commission modify Section 90.667(a) to define incumbent licensee's existing service areas based upon the 22 dBu "interference contour" -- without modification to the 40 dBu protected service contour. (Existing services areas are those in which the incumbent would be allowed to make modifications to its system. The protected service contour is the 40 dBu contour within which the incumbent is entitled to full co-channel interference protection).

The 40 dBu standard reflected in Section 90.667(a) is too restrictive and does not satisfy the Commission's stated objective of affording incumbent licensees flexibility to modify or augment their systems to effectively serve

the public.<sup>1</sup> In fact, by using the 40 dBu protected service contour the Commission has virtually eliminated all flexibility because in almost every case where a modification (or additional transmitter, microsite, enhancer, etc.) is proposed near the incumbent border, the 40 dBu contour will change.<sup>2</sup> Thus, Geotek asks the Commission to reconsider its decision by modifying its rule as outlined below to meet its objective of affording incumbent licensees with flexibility and protecting new MTA licensees.

Pursuant to existing rules, every licensed base station has a 40 dBu protected service contour and a 22 dBu interference contour.<sup>3</sup> Geotek proposes that the Commission continue to use the 40 dBu contour of authorized facilities<sup>4</sup> to define incumbents' "protected" area (the area within which the incumbent is entitled to full co-channel interference protection) while allowing them to make

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<sup>1</sup> Second Report at ¶ 47.

<sup>2</sup> Further, because incumbent systems are licensed on a transmitter-by-transmitter basis, where it loses or must relocate a site, under the existing rules, it loses its right to serve that area. Geotek seeks Commission clarification that under such circumstances, it does not lose protection and may subsequently make modifications to its system to again serve that area.

<sup>3</sup> See 47 C.F.R. § 90.621.

<sup>4</sup> Authorized facilities include sites which the Commission has afforded "primary" protection. See CMRS Third Report and Order at ¶ 119; Second Report at ¶ 53.

modifications to their systems provided that the "interference" or 22 dBu contour is not expanded.

Because the 22 dBu interference contours could not be expanded, incumbents would be required to design new sites (by reducing power, directionalizing antennas, etc.) to fit wholly within their existing 22 dBu contours. Further, no protection would be afforded to the 40 dBu contours of new sites that fell outside existing "protected" areas (40 dBu contours of existing sites). Simply put, any portion of the contour of a new site that fell in the area between an incumbent's existing 22 dBu and 40 dBu contour would not be entitled to interference protection from adjacent co-channel licensees.

Thus, defining incumbent licensees' "services areas" (the area in which the incumbent can add sites or modify existing sites) based on a 22 dBu standard will not prejudice MTA licensees while at the same time will give incumbents flexibility to make modifications to their systems to fill gaps and improve service to the public. The 22 dBu standard will not afford incumbent licensee any additional co-channel interference protection than already exists under the current rules nor will it result in expansion of the service area beyond that which exists today. Accordingly, Geotek respectfully requests that the Commission reconsider its service area definition and base it on a 22 dBu rather than a 40 dBu standard.

**II. The Commission Should Modify its Short-Spacing Rule to Minimize Interference Disputes Between Incumbents and MTA Licensees and Provide a More Balanced Operating Environment**

The Commission's application of the "short spacing" rule to the new MTA markets should be reconsidered and modified to avoid uncertainty and potential disputes among licensees.

Under the rules, the MTA licensee will be allowed to build-out its system provided it meets the minimum distance criteria in Section 90.621(b) of the rules.<sup>5</sup> In markets where the incumbent licensee operates from a single transmitter (or relatively few transmitters), the MTA licensee can and likely will completely surround the incumbent.<sup>6</sup> Given the applicability of the "short-spacing" rule to the new MTA markets, the MTA licensee can virtually box the incumbent in and prevent it from making needed modifications or supplementing its coverage to improve service.<sup>7</sup>

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<sup>5</sup> 47 C.F.R. § 90.621(b).

<sup>6</sup> See Second Report at ¶ 40-43.

<sup>7</sup> See generally, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Notice of Proposed Rule Making, 8 FCC Rcd 3950 (1993); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Implementation of Section 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR, Further Notice of Proposed Rule Making, PR Docket No. 93-144, PP Docket No. 93-253 (Released November 4, 1994).

Thus, Geotek recommends that the Commission require that the MTA licensee comply with the minimum distance criteria without short spacing. By adopting this approach the Commission will afford incumbent licensees with flexibility to respond to their customer needs and provide a more stable environment for both licensees to operate. Accordingly, by eliminating short spacing for MTA licensees the Commission will promote flexibility on the part of incumbent licensee and reduce its involvement in disputes between co-channel licensees.

### **III. The Commission Should Reconsider its Limited Application of the Foreign Ownership Waiver to MTA Licenses**

Geotek seeks reconsideration of the Commission's determination to grandfather timely-filed foreign ownership waiver petitions only for MTA licenses filed by an incumbent within the MTA.<sup>8</sup> Geotek recommends that the Commission grandfather such waiver petitions with respect to any MTA (or other license subject to Section 310(b) of the Act) that an eligible reclassified CMRS provider may acquire. Such action would be consistent with past Commission precedent involving "common carriers."

Section 332(c)(6) of the Communications Act permits the Commission to waive the application of Section 310(b) "to any foreign ownership that

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<sup>8</sup> Second Report at ¶ 71.

lawfully existed before May 24, 1993, of any provider of private land mobile service that will be treated as a common carrier...." (47 U.S.C. § 332(c)((6)) Nothing in the Act limits a waiver granted under this section to a specific license. Rather, the Act's focus is clearly on the service "provider" that will be reclassified as a "common carrier." Provided the service provider is granted a waiver and continues to meet the conditions of Section 332(c)(6)(A) and (B), it should be permitted to acquire additional licenses without further Commission action. This is entirely consistent with past Commission waivers of Section 310(b) involving common carriers.

Geotek timely-filed its foreign ownership waiver as required by the statute.<sup>9</sup> It now intends to participate in the 900 MHz MTA license auction. However, by only grandfathering waiver petitions for MTA licenses where the applicant is also the incumbent, Geotek could be excluded from bidding in certain MTAs where it has no incumbent license. Further, under the Commission's current interpretation of Section 332(c)(6), all reclassified CMRS providers that timely-filed a foreign ownership waiver could be prohibited from holding common carrier licenses, including Part 21 microwave or other such licenses used to link base station facilities in the MTA. Thus, Geotek requests that the Com-

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<sup>9</sup> See 47 U.S.C. § 332(c)(6).

mission reconsider its interpretation of Section 332(c)(6) and apply the grandfather provisions to the licensee rather than the individual license.

**IV. The Commission Should Clarify that Loss of an MTA License due to Failure to meet the Coverage Requirements Does not Effect Incumbent's Existing License**

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Geotek seeks clarification that loss of the MTA license will not adversely effect existing 900 MHz licenses. In defining the coverage requirements the Commission concluded that "an MTA licensee's failure to meet the coverage requirement imposed at either the third or fifth years of its construction period . . . will result in forfeiture of the entire MTA license."<sup>10</sup> To the extent that upon awarding an MTA license to an incumbent its existing license is "subsumed" in the new license,<sup>11</sup> Geotek recommends that it be protected in the event of default.

Absent clarification, an incumbent licensee will not only be risking substantial capital to bid on the MTA license, but also its prior investment in the license and facilities associated with its existing system. Geotek has entered the 900 MHz market through acquisitions of underutilized systems at fair market value. At present Geotek holds licenses in over 35 markets and fully intends to

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<sup>10</sup> Second Report at ¶ 43.

<sup>11</sup> See e.g. Second Report at ¶ 71.



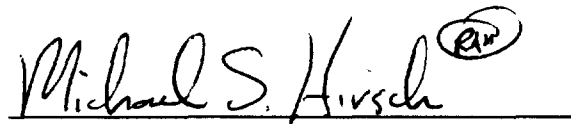
participate in the auction for the MTA license in those markets. While Geotek believes that it will meet all the Commission's coverage requirements, it should not be asked to risk its prior investment in these markets when the same risks are not imposed on non-incumbents. Requiring incumbent's to risk their existing systems raises the stakes and gives non-incumbents an unfair competitive advantage. Thus, Geotek seeks clarification of this point.

**CONCLUSION**

For the aforementioned reasons, Geotek respectfully requests that the Commission reconsider and clarify its decisions in this docket in accordance with these comments and recommendation.

Respectfully submitted by:

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